**Medin Realty Corp. c/o Martin Meyer; 1466 Holding Ltd.; 1944 Holding Ltd.; 1163 Holding Ltd.; 2395 Holding Ltd.; and 1113 Holding Ltd. *and* Service Employees International Union, Local 32E, AFL–CIO and Stationary Engineers, Firemen, Maintenance and Building Service Union, RWDSU, Local 670, Party in Interest.** Case 2–CA–23854

May 13, 1992

## DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

On August 7 and September 17, 1991, Administrative Law Judge Joel P. Biblowitz issued, respectively, the attached decision and supplemental decision. The Respondents and Stationary Engineers Local 670 each filed exceptions and supporting briefs. The General Counsel filed exceptions, a supporting brief, and an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decisions and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions,[2] and to adopt the recommended Order, as modified.[3]

## ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondents, Medin Realty Corp. c/o Martin Meyer; 1466 Holding Ltd.; 1944 Holding Ltd.; 1163 Holding Ltd.; 2395 Holding Ltd.; and 1113 Holding Ltd., Bronx, New York, their officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(a).

''(a) Giving effect to the July 17, 18, and 19 collective-bargaining agreements they entered into with Local 670 for these employees, or any renewal, extension, or modification of such agreements, unless and until Local 670 has been certified by the Board as the exclusive bargaining representative of such employees in an appropriate bargaining unit; provided, however, that nothing contained herein shall be construed as requiring the Respondents to abandon or vary any wage, hour, seniority, or other substantive terms of employment which they may have established in the performance of the contracts.''

2. Substitute the attached notice for that of the administrative law judge.

[1] The Respondents and Local 670 have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] In affirming the judge's conclusion that the Respondents violated Sec. 8(a)(2) and (3) by recognizing and entering into collective-bargaining agreements with Stationary Engineers Local 670, we rely solely on the judge's finding that the General Counsel established that, when recognition was extended, Local 670 did not represent an uncoerced, unassisted majority of the Respondents' employees. *Ladies Garment Workers v. NLRB*, 366 U.S. 731 (1961). We find no need to pass on the judge's discussion of *Bruckner Nursing Home*, 262 NLRB 955 (1988), or on any other theory of violation advanced by the General Counsel.

We also affirm the judge's conclusion that the Respondents' officials Meyer and Marks violated Sec. 8(a)(1) by statements made to the nonemployee wife of employee Carlos Cruz. In accord with Board precedent, the existence of the spousal relationship is sufficient to warrant the inference that such statements would reasonably tend to influence the employee spouse. E.g., *Jennings & Webb, Inc*., 288 NLRB 682, 688–689 (1988), enfd. 875 F.2d 315 (4th Cir. 1989); *Nebraska Bulk Transport*, 240 NLRB 135, 144, 156 (1979), enfd. in relevant part 608 F.2d 311 (8th Cir. 1979). Moreover, the violations are particularly well established where, as here, the respondent employer deliberately attempts to use the nonemployee spouse to whom the interrogation and threats are directed as a conduit to employees, and where the employer fully intends and reasonably expects the nonemployee spouse to influence the employee spouse or other employees. *Walgreen Co.*, 206 NLRB 124 (1973), enfd. 509 F.2d 1014 (7th Cir. 1975).

[3] In accord with the Respondents' exceptions, we shall strike from the remedy section of the judge's decisions the words ''authorize or'' appearing in the sentence, ''However, nothing in the Order herein shall be construed to authorize or require Respondents to withdraw or eliminate any wage increase or other benefits in the employees' terms and conditions of employment which may have been established pursuant to those agreements, except with respect to the agreements' union security provisions, which may no longer be enforced.'' See *R.J.E. Leasing Corp*., 262 NLRB 373 (1982). We shall also substitute Order and notice provisions corresponding to the corrected remedial language.

## APPENDIX

### NOTICE TO EMPLOYEES
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
### An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post an abide by this notice.

WE WILL NOT recognize or bargain with Stationary Engineers, Firemen, Maintenance and Building Service Union, RWDSU, Local 670 as the collective-bargaining representative of the employees at our buildings until Local 670 has been certified by the National Labor Relations Board as the representative of such employees.

WE WILL NOT give effect to the July 17, 18, and 19 collective-bargaining agreements we entered into with Local 670 for our employees, or any renewal, extension, or modification of such agreements, unless and until Local 670 has been certified by the Board as the exclusive bargaining representative of such employees in an appropriate bargaining unit; provided, however, that nothing contained herein shall be construed as requiring the Respondents to abandon or vary any wage, hour, seniority, or other substantive terms of employment which they may have established in the performance of the contracts.

WE WILL NOT recognize or bargain with Local 670, or any other labor organization, at a time when such labor organization does not represent an uncoerced majority of the employees at our buildings.

WE WILL NOT threaten our employees with reprisals for engaging in activities on behalf of Service Employees International Union, Local 32E, AFL–CIO.

WE WILL NOT create an impression among our employees that their union activities are under surveillance.

WE WILL NOT inform our employees that it would be futile for them to select Local 32E as their collective-bargaining representative.

WE WILL NOT direct our employees not to sign authorization cards on behalf of Local 32E.

WE WILL NOT interrogate our employees regarding their activities on behalf of Local 32E.

WE WILL NOT solicit our employees to sign authorization cards for any labor organization that is not their duly designated collective-bargaining representative.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL withdraw and withhold all recognition from Local 670 as your representative, unless and until it has been certified by the National Labor Relations Board as your exclusive representative.

WE WILL reimburse our employees for all dues and fees withheld from their pay pursuant to the collective-bargaining agreements we signed with Local 670.

MEDIN REALTY CORP.; 1466 HOLDING LTD.; 1944 HOLDING LTD.; 1163 HOLDING LTD.; 2395 HOLDING LTD.

*Randy M. Girer, Esq.*, for the General Counsel.
*Morris Tuchman, Esq.*, for the Respondent.
*Steven H. Kern, Esq.*, for the Charging Party.
*Richard M. Greenspan, Esq.* and *Karen Hertz, Esq.*, for the Party in Interest.

## DECISION

### STATEMENT OF THE CASE

JOEL P. BIBLOWITZ, Administrative Law Judge. This case was heard by me in New York, New York, on May 13 and 14, 1991. The charge, first and second amended charges were filed by Service Employees International Union, Local 32E, AFL–CIO (Local 32E), on September 20 and 27 and October 25, 1989.[1] The consolidated complaint, which issued on May 31, 1990, alleges that 1466 Holding Ltd. (1466), 1944 Holding Ltd. (1944), 1163 Holding Ltd. (1163), 2395 Holding Ltd. (2395), and 1113 Holding Ltd. (1113), and Medin Realty Corp. (Medin) (collectively Respondents) violated Section 8(a)(1) and (2) of the Act by recognizing Stationery Engineers, Firemen, Maintenance and Building Service Union, RWDSU, Local 670 (Local 670) as the collective-bargaining representative of their employees (the building superintendents of the buildings) at a time when Local 670 did not represent an uncoerced majority of these employees. The consolidated complaint further alleges that Respondents also executed collective-bargaining agreements containing union-security agreements with Local 670 in violation of Section 8(a)(1) and (3) of the Act. The complaint also alleges that Medin violated Section 8(a)(1) and (2) of the Act through the actions of Martin Meyer, its owner, and David Marks, its managing agent, admitted agents of Respondents. It is alleged that in May or June, Medin, at its building at 2334 Creston Avenue, Bronx, New York (the Creston building), by Meyer, threatened employees with reprisals for engaging in activities in support of Local 32E and that about the same time and the same location Marks created an impression among employees that their union activities were under surveillance by Respondents, informed employees that it would be futile for them to select Local 32E as their collective-bargaining representative and directed employees not to sign authorization cards on behalf of Local 32E. It is further alleged that Marks, at the 111 East 182d Street building in the Bronx (the East 182d Street building), and at its facility, interrogated employees concerning their support for and activities on behalf of Local 32E and solicited employees to sign union authorization cards on behalf of another labor organization. Finally, it is alleged that in or about May and June, Marks rendered aid, assistance, and support to Independent Union of Building Service Employees, Local No. 1 (Local 1), by soliciting its employees to sign authorization cards and petitions in order to become members of Local 1. By this activity Medin is alleged to have violated Section 8(a)(1) and (2) of the Act.

On the entire record, including the briefs received from counsel for the General Counsel and Local 670, and my observation of the witnesses, I make the following

### FINDINGS OF FACT

#### I. JURISDICTION

The six Respondents are each New York State corporations which own residential apartment buildings. Respondents 1466, 1163, and 2395 own buildings located at 1466 Townsend Avenue, 1161–1163 Stratford Avenue and 2395 Morris

[1] Unless indicated otherwise, all dates referred to herein relate to the year 1989.

Avenue, all in the Bronx, New York, respectively and, admittedly, constitute a single-integrated business enterprise and a single employer within the meaning of the Act. Medin, 1944, and 1113 own buildings located at 305 West 150th Street, New York, New York (the West 150th Street building), 1944 Andrews Avenue, and 15 Featherbed Lane in the Bronx, New York, respectively, and, admittedly, constitute a single-integrated business enterprise and a single employer within the meaning of the Act. Annually, in the course of their business operations, 1466, 1163, and 2395 collectively derive gross revenue in excess of $500,000 and purchase and receive at their facilities products, goods, and materials valued in excess of $5000 from suppliers located outside the State of New York. Likewise, Medin, 1944, and 1113 collectively derive gross revenue in excess of $500,000 and purchase and receive at their facilities products, goods, and materials valued in excess of $5000 from suppliers located outside the State of New York. Respondents admit, and I find, that they are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

## II. LABOR ORGANIZATION STATUS

Respondents admit, and I find, that Local 32E, Local 670, and Local 1 each constitute a labor organization within the meaning of Section 2(5) of the Act.

## III. THE FACTS

There are two distinct allegations herein: foremost is that five of the six Respondents—1466, 1944, 1163, 2395, and 1113—rendered unlawful assistance to Local 670 regarding these buildings and executed collective-bargaining agreements (containing union-security clauses) for these buildings with Local 670 at a time when Local 670 did not represent an uncoerced majority of the employees of these buildings, in violation of Section 8(a)(1), (2), and (3) of the Act. The complaint also alleges that Respondent Medin, through Meyer and Marks, violated Section 8(a)(1) and (2) of the Act through statements made to employees at the Creston building, the East 182d Street building, and the West 150th Street building. As Respondent did not enter into collective-bargaining agreements for either of these buildings, the only remedy for these latter allegations is cease and desist in their actions toward the employees.

Local 32E had a collective-bargaining agreement with 1940 Holding Ltd. (1940) covering the Creston building effective for the period September 15, 1985, through September 14, 1988. As is true of all the agreements herein, the only employee involved was the superintendent of the building, Carlos Cruz; the agreement was signed by Meyer on behalf of 1940. Domenic Paciello, secretary-treasurer and formerly vice president of Local 32E, testified that by letter dated September 14, 1988, Local 32E wrote to Meyer requesting negotiations for a new agreement for the building. Receiving no response to this letter, Local 32E obtained an authorization card from Cruz and on September 14, 1988, filed a petition with the New York State Labor Relations Board (the State Board). At the State Board hearing, the Employer raised the issue of jurisdiction; at that time the hearing was adjourned. On October 24, 1988, ''Martin Meyer, d/b/a 1113 Holding Ltd.'' filed a petition with the Board for an advisory opinion as to whether the Board would assert jurisdiction over its operations. The petition and advisory opinion refer to the Petitioner's operation of the Creston building, as well as the 1113 building located on Featherbed Lane and the 1944 building on Andrews Avenue, both in the Bronx, New York (the Featherbed Lane building and the 1944 building). The Board in its Advisory Opinion dated November 30, 1988, concluded that based on the provided allegations and assumptions, the Board would assert jurisdiction over the Petitioner. By letter dated December 23, Local 32E moved to withdraw its petition with the State Board; the withdrawal was approved on January 3.

Paciello testified that he then spoke to Cruz' wife (Ms. Cruz), and arranged a meeting at the Cruz apartment at the Creston Avenue building with a Local 32E organizer who spoke Spanish, Pete Martinez, and ''our superintendents''; Paciello did not attend the meeting. Ms. Cruz testified that there was a meeting at her house in April with Martinez. The following superintendents attended the meeting: Luis Melendez, from 2240 Ryer Avenue in the Bronx (Ryer Avenue building), Jose Burgos, from the East 182d Street building, Alejandro Nin, from the West 150th Street building, Ramon Colon, from the 2395 building, Jesus Duran, from the 1944 building, Orlando Maldonado, from the 1466 building, Ronald Lopez of the 1163 building, and Cruz and his wife. Ms. Cruz assisted at the meeting because most of the supers, including Cruz, did not speak English too well. She testified that Cruz, Burgos, Melendez, Nin, Colon, Maldonado, Duran, and Lopez signed authorization cards for Local 32E at that meeting or shortly thereafter. These cards were received into evidence; four are dated April 12, Cruz' card is dated March 1, and the remaining three are dated between April 17 and April 30. Burgos, Melendez, and Nin, the only supers involved herein who testified, each testified that they signed an authorization card for Local 32E at this meeting at the Cruz apartment. Paciello testified that on receipt of these authorization cards, he sent a letter to Respondents demanding recognition. Apparently, no response was forthcoming. Local 32E then filed a series of petitions with the Board. All of these petitions list the Employer as ''Martin Meyer, d/b/a 1113 Holding Ltd.'' Three petitions were filed prior to the Board hearing on June 12; the first was filed on April 20 and lists the unit as ''All building service employees employed at'' the Creston Avenue building, the 1163 building, the Ryer Avenue building, the 2395 building, the 1944 building, and the Featherbed Lane building. The next petition was filed on April 27 and added the 1466 building to those listed on the original petition. On May 8, Local 32E filed an amended petition that added the West 150th Street building and the East 182d Street building. The supers of these three added buildings were, respectively, Maldonado, Nin, and Burgos.

A hearing was scheduled for June 12; Local 32E came with two attorneys as well as a number of the supers. Meyer appeared for the Employers, also with counsel. There is a major difference between the testimony of Paciello and Meyer in this regard. Each testified that prior to the opening of the representation hearing it was suggested that the two sides meet to decide whether they could settle the matter without the need of a hearing and that they did meet. At the conclusion of this meeting Local 32E withdrew its petition. The substance of this meeting, however, is in dispute. Paciello testified that at this meeting, he and Meyer agreed ''that we would try to resolve our problems to withdrew [sic]

said petition and if in a month's time we could not resolve our problems, to refile and all parties agreed to same.'' In other words, if he and Meyer could not come to an agreement, Local 32E would refile the petition. He does not know who initiated the idea, ''but it was understood by all parties present.'' Paciello's affidavit given to the Board states that he withdrew the petition and subsequently refiled, but does not refer to the alleged agreement reached with Meyer on June 12, that if they could not come to an agreement Local 32E would refile the petition. Paciello identified his handwritten notes prepared at the time of these events. The notes state:

> After lengthy discussion Martin Meyer agreed to meet with L32E and discuss a union agreement.
>
> He, Martin Meyer, requested a w/d from the NLRB based on above and failing to reach any contract settlement-32E will Re-File on same issues.

Meyer testified that he met with Paciello and his counsel, Miller. He told them that he already had contracts covering two or three buildings that they had petitioned for. Miller and Paciello then told him that two of their buildings, the Creston Avenue building and the East 182d Street building, were their biggest concern and they needed a contract for these buildings and that if they could get that, they would ''walk away'' from the other buildings. It was agreed that Local 32E would withdraw their petition. ''At no time, whatsoever,'' did they discuss refiling the petition. Paciello testified that he never told Meyer that Local 32E would abandon or ''walk away'' from any of the buildings. When Meyer told him that Respondents already had contracts for some of these buildings, he told him that if Meyer could present them with satisfactory proof of these contracts, he would ''abide by'' this proof. Paciello and Meyer met on two occasions in June; without getting into the substance of the negotiations, there were some outstanding differences and they did not meet again. During these meetings, Meyer told Paciello that he had contracts with Local 670 for four or five of the buildings Local 32E had petitioned for. Paciello told him that ''if that was the case and everything was legal we would not object.'' At the conclusion of these meetings, Local 32E filed a petition with the Board. The first petition after the representation hearing was filed on July 20 and the unit requested is identical to the unit initially petitioned for on April 20. On September 25, Local 32E amended the petition to add the West 150th Street and East 182d Street buildings. On November 6, Local 32E again amended the petition to add the 1466 building, so that the petition was identical to the way it was on June 12. Meyer testified that he met with Paciello and Counsel Miller on two occasions in June during which they negotiated for two of the buildings, the Creston building and the East 182d Street building. After some difficult bargaining, they met again and Miller said that everything would have to be renegotiated. He refused and they did not meet again.

Each of the Respondents have collective-bargaining agreements covering the supers involved herein. Medin has a contract with Local 1 effective for the period August 26, 1986, through September 1, 1989; this agreement is not being attacked herein. The following five agreements are: a collective-bargaining agreement between Local 670 and 1163, dated July 17, and effective for the period July 14, 1989, through July 13, 1992; a collective-bargaining agreement between Local 670 and 1113, dated July 19, and effective for the period July 14, 1989, through July 13, 1989 [sic]; a collective-bargaining agreement between Local 670 and 1944, dated July 18, and effective for the period July 14, 1989, through July 13, 1992; a collective-bargaining agreement between Local 670 and 1466, dated July 17, and effective for the period July 14, 1989, through July 13, 1992, and a collective-bargaining agreement between Local 670 and 2395, dated July 17, and effective for the period July 14, 1989, through July 13, 1992. Each of these agreements contain a union-security clause making membership in Local 670 within 30 days a requirement of continued employment.

David Green, business agent and organizer for Local 670, testified that he spoke to, and obtained signed authorization cards for, Local 670 from, Maldonado, Duran, Garcia, Colon, and Lopez, the supers of the 1466, 1944, Featherbed Lane, 2395 and 1163 buildings, respectively. He testified that the then vice president of Local 670, Robert Humes, gave him some building addresses and directed him to organize the employees at those addresses. This testimony came in answer to a question of whether in July he became aware that Meyer had other buildings in the Bronx. Yet, he testified on five occasions, regarding the cards of Maldonado and Garcia, that he met with the employees involved and obtained the cards in August or September. It was not until the second time that counsel for Local 670 instructed him to look at the authorization cards that he changed his testimony to July. Of the five Local 670 authorization cards, only two are dated: the cards of Colon (July 17) and Garcia (July 1). Green's testimony was practically identical for all of the cards; that he spoke to these individuals about Local 670 and the benefits it could provide and these individuals or their wives, then signed the cards. On cross-examination, Green testified that he does not speak Spanish, but that he was able to communicate with the employees through their wives or, on a couple of occasions, with a Spanish-speaking friend of his. He also could not testify with any certainty what he did with the signed authorization cards after obtaining them; he probably gave them to Humes. He was not involved in negotiating the agreements for these five buildings. The only evidence in this regard was testified to by Meyer. He testified that in July, he received a telephone call from Humes, whom he knows from other of his buildings, who said that he had signed authorization cards from some of his employees and he wanted to negotiate a contract. Meyer told Humes that he would only agree to the contract he had preliminarily agreed to with Local 2E before they demanded that it be renegotiated. Humes said that he would like to see what that agreement contained and asked when he could come to Meyer's office. Meyer answered: ''For my part, you can come over right now.'' Humes came to his office at about 4 p.m. Humes showed Meyer the authorization cards and Meyer compared the signatures with his payroll records. They negotiated, based on the agreement that Meyer thought he had with Local 32E, but there were ''numerous, numerous, numerous, numerous'' modifications or corrections made. However, Humes did not have all five authorization cards with him and Meyer told Humes that he would only sign contracts for buildings for which he had signed authorization cards. On the following day and the day after that, as well, Humes came to his office, presented him

with a card or cards, and they signed the contracts for the buildings involved.

In addition to the above allegations of unlawful assistance to Local 670, there are also allegations of unlawful statements made by Meyer and Marks. Ms. Cruz testified that Marks and Meyer are her husband's superiors. As stated above, the Local 32E agreement covering the Creston building expired in September 1988; Ms. Cruz testified that in early 1989, Meyer came to the Creston building and told them that Cruz was no longer in the Union and that he was no longer bound by Local 32E rules, and that Cruz would have to do whatever he told him to do. Ms. Cruz testified further that a few days after the Local 32E meeting with the supers in her apartment, Meyer called her and said that he was upset and angry with her because she was doing something wrong to him. He said: ''You shouldn't be doing these things.'' He also said that no union was going to tell him what to do and that she would regret it because he would report to the Labor Department that she was illegally on welfare, food stamps, and Medicaid. Ms. Cruz denied these allegations. Meyer testified that he had a conversation with Ms. Cruz in about April or May; she mentioned the April meeting of supers at her apartment and he said that he was ''very disappointed, I thought I had a different type of relationship with her.''

There are also allegations of statements made by Marks, who did not testify, to Mr. and Ms. Cruz, Burgos, and Nin. Ms. Cruz testified that on the Monday following the above-mentioned conversation with Meyer, Marks came to her apartment. He said that he knew about the meeting of the supers in her apartment and that: ''We shouldn't be doing this.'' He said that what they were doing was wrong, and in the end they would lose. He also threatened to report that she was on welfare when she wasn't legally entitled to it. She again denied this and said that they had asked him for benefits and when they didn't get them, they went to the Union. He then told her to talk to Burgos and tell him to stop trying to get into Local 32E ''because he was going no where.'' She testified that although Burgos can understand English, he had difficulty explaining himself in English. Ms. Cruz further testified that after this, Marks came to the building once or twice a week and would speak to her in the apartment or in the street. He asked her what was going on with Local 2E and that they would not get any place trying to get into a union. He again asked her to speak to Burgos and said that they wouldn't get anywhere with the Local 32E and ''that we were going to regret it.'' He said that he would report her to welfare; she said that he could do it if he wished because she no longer received welfare.

Burgos testified that about 3 days after the meeting at the Cruz apartment, Marks met him at his East 182d Street building and told him that they had a union with the same benefits and Burgos said that was the first that he knew of a union at the building. Marks then gave him a card to sign for this Union but Burgos refused saying that he had already signed a card for Local 82E. A few days later, Marks came to the West 150th Street building where Burgos was assisting Nin, the super for the building. Marks again asked Burgos (Nin was not present at the time) to sign the union card and Burgos again refused. Burgos asked to see the card, but Marks refused to show it to him, although he did tell him that ''it was union number one.'' Nin testified that about a month after the meeting at the Cruz apartment, Marks came to the West 150th Street building on a day that Burgos was also working there. Marks told Nin to stay in the building while he spoke outside the building with Burgos; a few weeks later, Marks came to the West 150th Street building where Nin was working in one of the apartments. Marks handed him a paper to sign stating that the work had been completed. He signed it and under that paper was an authorization card for Local 1 and Marks told Nin to sign it. Nin refused to sign the card without first speaking to somebody else about it. Melendez testified that about a month after the meeting at the Cruz apartment, Marks and Sam David, the managing agent of the Ryer Avenue building, and an admitted agent of Respondents, came to that building. David asked him why he signed with Local 32E; Melendez said that he wanted to be in Local 32E for the benefits. He also testified that he never heard of Local 670, although he once received a book from them after signing the card for Local 32E, but he threw it away. He testified that during his 5-year employment at the building he never heard that there was a union contract covering the building. Received in evidence was a contract for the Ryer Avenue building between Local 670 and Samest Management, effective 1984 through 1987; David, Melendez, and Humes signed the agreement. Green testified that Local 670 has been receiving dues for Melendez, through checkoff, since about 1987.

## IV. ANALYSIS

There are a number of 8(a)(1) and (2) allegations of statements of Marks and Meyer at a number of Respondents' buildings; the principal allegation, however, is that Respondents recognized and entered into collective-bargaining agreements with Local 670 at a time when it did not represent an uncoerced majority of the employees at the following buildings: the 1466 building, the 1944 building, the Stratford Avenue building, the 2395 building, and the Featherbed Lane building. In addition, there are a number of credibility determinations to be made.

I found Ms. Cruz to be a credible witness who testified in an articulate and honest manner. I also found Paciello to be a credible witness. He appeared to be testifying in a truthful manner and I credit his testimony as well. The only troubling aspect of Paciello's testimony is that he waited almost 4 weeks after his negotiations with Meyer ended before refiling the petition with the Board. Considering his testimony that he and Meyer agreed on June 12 that Local 32E would refile if negotiations were unsuccessful in reaching an agreement, it would seem more reasonable for him to refile earlier than July 20. However, I find it more likely that this delay was due to the rush of other business or negligence on the part of Local 32E. One reason for this finding is that I found both Meyer and Green to be incredible witnesses. It does not take someone with years of experience in labor law to see through their story. After Local 32E withdrew its petition, but prior to refiling, Local 670 suddenly decided to organize five of the buildings Local 32E had petitioned for. Humes, the Local 670 representative who, allegedly, decided to organize these buildings, did not testify. Green, who testified on five occasions that he spoke to these employees in August or September, finally testified that it was in July, after being shown the authorization cards for the second time. Of the five cards signed (one for each building) only

two are dated. Colon's card is dated July 17; the contract for his building is also dated July 17. Garcia's authorization card, the only other dated card, is dated July 18; the contract for his building is dated July 19. I find it incredible that Meyer, who was such a tough negotiator with Local 32E and was unable to reach agreement with Paciello over a couple of meetings, was able to examine the Local 670 authorization cards, compare them with his payroll records for authenticity, negotiate contracts for the five buildings, and have the three different managing agents sign the appropriate contract, all within the same day to 48 hours of the signing of the cards. If there were an Olympic contest for speed in negotiating and executing collective-bargaining agreements, these Respondents would win the gold medal. I would also credit the testimony of Paciello over Meyer and find that in their negotiations Paciello never agreed to ''walk away'' from most of the buildings in exchange for a contract for two of the buildings. Rather I find that, as testified to by Paciello, he said that if Meyer could establish legal agreements for some of these buildings, he would act appropriately. Therefore, although the testimony of Meyer and Green regarding Local 670's card solicitation and the contract executions was, basically, uncontradicted, I discredit it as being beyond belief.

I therefore credit Paciello that he and Meyer agreed on June 12 that Local 32E would withdraw its petition, but, if they were unsuccessful in negotiating a collective-bargaining agreement, that Local 32E would refile the petition. They were unsuccessful in reaching agreement, but Local 32E did not refile its petition until July 20, 1, 2, and 3 days after the contracts were allegedly signed for the five buildings. Counsel for Local 670, and, presumably, counsel for Respondents, allege that under *Bruckner Nursing Home*, 262 NLRB 955 (1982), since Local 32E did not have a petition on file at the time these contracts were executed, the recognition and agreements must stand. The other factor in Respondent's favor is that there is no direct evidence that any of its five authorization cards are fraudulent or were assisted by Respondents.

General Counsel relies on four theories supporting the proposition that the execution of the collective-bargaining agreements by Respondents and Local 670, on July 17, 18, and 19 violated Section 8(a)(1), (2), and (3) of the Act. General Counsel's principal reliance is on *Bruckner*. That case examined *Midwest Piping Supply Co*., 63 NLRB 1060 (1945), and found the need to change the law of when an employer may lawfully recognize one union when there are rival organizing campaigns by two or more unions. The Board found:

> We will no longer find Section 8(a)(2) violations in rival union, initial organizing situations when an employer recognizes a labor organization which represents an uncoerced, unassisted majority, before a valid petition for an election has been filed with the Board. However, once notified of a valid petition, an employer must refrain from recognizing any of the rival unions. . . . Making the filing of a valid petition the operative event for the imposition of strict employer neutrality in rival union, initial organizing situations will establish a clearly defined rule of conduct and encourage both employee free choice and industrial stability.

General Counsel argues that Respondents violated ''the spirit and rationale'' and ''the clear intention, if not the letter'' of *Bruckner*. She argues that since Local 32E did file a petition to represent Respondents' employees (although it subsequently withdrew the petition) the requirements set forth in *Bruckner* have been met. I agree for a number of reasons that, under *Bruckner*, Respondents have violated Section 8(a)(1), (2), and (3) of the Act. Foremost is that Local 32E filed a petition and although it was later withdrawn it made Respondents aware that it had a proper showing of interest from its employees and put them on notice not to recognize any other union as the representative of these employees. Further, I have found that Paciello and Meyer agreed on June 12 that the petition would be withdrawn pending negotiations and would be refiled if those negotiations were not fruitful. Respondents were therefore put on further notice not to recognize any other union during this hiatus period. And finally, in the above-quoted language from *Bruckner* the Board states that it will no longer find a violation, absent the filing of a petition, where the union ''represents an uncoerced, unassisted majority'' of the unit employees. As stated above, I find that Local 670 never represented an uncoerced, unassisted majority of these employees. I therefore find that by recognizing and executing collective-bargaining agreements with Local 670 on July 17, 18, and 19, said agreements containing union-security agreements, Respondents violated Section 8(a)(1), (2), and (3) of the Act. Having found that Respondents violated the Act under *Bruckner*, I find it unnecessary to examine General Counsel's other theories.

There remains for consideration the allegations that Respondents violated Section 8(a)(1) and (2) of the Act by statements made by Meyer and Marks. As stated above, I found Cruz to be a credible witness and credit her testimony over Meyer. Although she was not an employee of Respondents, that is not a valid defense herein. Because of her command of the English language, Respondents (and Local 32E) used her as a conduit in communicating with the supers, including Cruz. In addition, she was more than a disinterested observer in these goings on. Supers are given an apartment along with the job; when the job goes, so does the apartment. Ms. Cruz shares the apartment with her husband and must have been well aware of the consequences of crossing Meyer and Marks. I find that a few days after the Local 32E meeting in the Cruz apartment, Meyer called Ms. Cruz and said that he was angry and upset with her because she was doing something wrong to him, saying: ''You shouldn't be doing these things.'' He also told her that no union was going to tell him what to do and that she would regret it because he would report her for illegally being on welfare, medicaid, and getting food stamps. This clearly constitutes a threat of reprisals for engaging in union activities, as alleged in paragraph 9 of the complaint, and I so find. It is next alleged that Respondent violated Section 8(a)(1) of the Act by statements made by Marks to Ms. Cruz at the Creston building. In this regard, she testified that a few days after Meyer spoke to her, and said that he knew of the supers meeting in her apartment, that what they were doing was wrong, they should not be doing it, and in the end they would lose. He then threatened to report her to the Government for illegally being on welfare. He also told her to talk to Burgos and to tell him to stop trying to get into Local 32E, ''because he

was going nowhere.'' After this, Marks came to the Creston building once or twice a week, asked her what was going on with Local 32E, and said that they would not get anywhere with Local 32E, and that they would regret it. This credited testimony of Ms. Cruz confirms the allegations of paragraph 10 of the complaint that Respondent Medin, through Marks, at the Creston building, violated Section 8(a)(1) in the following manner:

(1) Created an impression among employees that their union activities were under surveillance by Respondents;

(2) Informed employees that it would be futile for them to select Local 32E as their bargaining representative.

(3) Directed employees not to sign authorization cards on behalf of Local 32E.

I therefore find that it violated Section 8(a)(1) of the Act as alleged.

It is next alleged (at paragraph 11) that on two occasions, in about May and June, Respondent Medin, by Marks, at the East 182d Street building and at its facility, solicited employees to sign authorization cards for a union other than Local 32E. The credible and uncontradicted testimony of Burgos and Nin establishes that during this period, Marks met them at the East 182d Street building and the West 150th Street building (which is owned by Respondent Medin) and tried to get them to sign authorization cards, apparently, for Local 1. This, obviously violates Section 8(a)(1) and (2) of the Act, and I so find. Paragraph 12 alleges that in May or June, Respondent Medin, by Marks, at its facility, interrogated employees concerning their support for, and activities on behalf of, Local 32E. The only evidence relating to this allegation is Melendez' testimony that David, in the company of Marks, at the Ryer Avenue building, asked him why he signed with Local 32E. The Ryer Avenue building is owned by Samest Management, not a Respondent herein. Therefore the location of the allegation in the complaint is incorrect, as is the agent involved, David, rather than Marks. Because the interrogation occurred during the period alleged in the complaint in the presence of Marks, who was named in the complaint, and Melendez was cross-examined by counsel for Local 670, as well as counsel for Respondents, although not about the alleged interrogation, I find that the allegation is within the purview of the complaint and violates Section 8(a)(1) of the Act under *Rossmore House*, 269 NLRB 1176 (1984), and *Sunnyvale Medical Clinic*, 277 NLRB 1217 (1985).

In her brief, counsel for General Counsel moves to amend the complaint to allege certain threats, not specifically alleged in the complaint, as violations of Section 8(a)(1) of the Act. The testimony in support of these allegations came about during the testimony of Cruz, in the midst of testimony of allegations specifically alleged in the complaint. Counsel for General Counsel gives no reason why she did not amend the complaint at an earlier time to notify the other parties of the full width of her allegations, rather than waiting until the posttrial brief to make this amendment. I therefore deny this request to amend, and decline to find these violations. *Middletown Hospital Assn.*, 282 NLRB 541 (1986); *Massillon Hospital Assn.*, 282 NLRB 675 at 679 (1986).

## CONCLUSIONS OF LAW

1. Respondents 1466, 1163 and 2395, which constitute a single-integrated business enterprise and a single employer within the meaning of the Act, are engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondents Medin, 1944, and 1113, which constitute a single-integrated business enterprise and a single employer within the meaning of the Act, are engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. Local 32E, Local 1, and Local 670 are each labor organizations within the meaning of Section 2(5) of the Act.

4. Respondents violated Section 8(a)(1) and (2) of the Act on July 17, 18, and 19, 1989, by recognizing Local 670 as the collective-bargaining representative of its employees at these buildings.

5. Respondents violated Section 8(a)(1), (2), and (3) of the Act by entering into collective-bargaining agreements with Local 670, on about July 17, 18, and 19, 1989, said agreements containing union-security agreements requiring membership in Local 670 after 30 days of employment with Respondents.

6. Respondents violated Section 8(a)(l) of the Act in the following manner:

(a) Threatening its employees with reprisals for engaging in activities in support of Local 32E.

(b) Interrogating its employees concerning their support for Local

(c) Creating an impression among its employees that their Local 32E activities were under surveillance by Respondents.

(d) Informing its employees that it would be futile for them to select Local 32E as their collective-bargaining representative.

(e) Directing its employees not to sign authorization cards for Local 32E.

7. Respondents violated Section 8(a)(1) and (2) of the Act by soliciting its employees to sign authorization cards for Local 1.

## THE REMEDY

Having found that Respondents have engaged in certain unfair labor practices within the meaning of Section 8(a)(1), (2), and (3) of the Act, I shall recommend that they be required to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. In addition, Respondents will be ordered to withdraw and withhold all recognition from Local 670 until such time as Local 670 has been certified by the Board as the exclusive representative of the employees involved herein, to cease giving any effect to the collective-bargaining agreements they entered into with Local 670 on July 17, 18, and 19, 1989, and to reimburse the employees for all dues or fees they paid to Local 670, as provided below. However, nothing in the Order herein shall be construed to authorize or require Respondents to withdraw or eliminate any wage increase or other benefits in the employees' terms and conditions of employment which may have been established pursuant to those agreements, except with respect to the agreements' union-security provisions, which may no longer be enforced.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[2]

[2] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be

*Continued*

## ORDER

The Respondents, Medin Realty Corp. c/o Martin Meyer; 1466 Holding Ltd.; 1944 Holding Ltd.; 1163 Holding Ltd.; 2395 Holding Ltd.; and 1113 Holding Ltd., Bronx, New York, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Recognizing or bargaining with Local 670 as the exclusive collective-bargaining representative of their employees at the buildings involved herein, unless and until Local 670 has been certified by the National Labor Relations Board as the exclusive bargaining representative of such employees in an appropriate bargaining unit.

(b) Giving effect to the July 17, 18, and 19, 1989 collective-bargaining agreements they entered into with Local 670 for these employees, or any modifications or extensions of said agreements.

(c) Recognizing or bargaining with Local 670, or any other labor organization, at a time when said labor organization does not represent an uncoerced majority of the employees in the unit for which recognition is extended.

(d) Threatening its employees with reprisals for engaging in activities in support of Local 82E.

(e) Creating an impression among their employees that their union activities were under surveillance.

(f) Informing its employees that it would be futile for them to select Local 32E as their bargaining representative.

(g) Directing employees not to sign authorization cards for Local 32E.

(h) Interrogating employees concerning their support for Local 32E.

(i) Soliciting employees to sign authorization cards on behalf of a labor organization not the duly designated collective-bargaining representative of the employees.

(j) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Reimburse its past and present employees for all dues and fees withheld from their pay pursuant to the collective-bargaining agreements between Respondents and Local 670 dated July 17, 18, and 19, 1989.

(b) Preserve and, on request, make available to the Board and its agents payroll and other records necessary to determine the amount due under paragraph 2(a) above.

(c) Post at all of their buildings, in places where such notices are customarily posted, copies of the attached notice marked ''Appendix.''[3] Copies of the notice, on forms provided by the Regional Director for Region 2, after being duly signed by Respondents' authorized representatives, shall be mailed to the superintendents of all the buildings involved herein, as well as being posted by Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondents to ensure that the notices are not altered, defaced or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order of what steps Respondents have taken to comply.

adopted by the Board and all objections to them shall be deemed waived for all purposes.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

*Randy M. Girer, Esq.*, for the General Counsel.
*Morris Tuchman, Esq.*, for the Respondent.
*Steven H. Kern, Esq.*, for the Charging Party.
*Richard M. Greenspan, Esq.* and *Karen Hertz, Esq.*, for the Party in Interest.

## SUPPLEMENTAL DECISION

JOEL P. BIBLOWITZ, Administrative Law Judge. In a decision dated August 7, 1991, I found that Respondent, a single integrated business enterprise and a single employer within the meaning of the Act, violated Section 8(a)(1), (2), and (3) of the Act by recognizing and entering into collective-bargaining agreements with Stationery Engineers, Firemen, Maintenance and Building Service Union, RWDSU, Local 670 (Local 670), on July 17, 18, and 19, 1989. In this decision, I also found that Respondent violated Section 8(a)(1) of the Act by interrogating employees regarding their support for Service Employees International Union, Local 32E, AFL–CIO (Local 32E), threatening its employees with reprisals for supporting Local 32E, creating an impression among its employees that their Local 32E activities were under surveillance by Respondent, informing its employees that it would be futile for them to select Local 32E as their collective-bargaining representative, and directing its employees not to sign authorization cards for Local 32E. Finally, I found that Respondent also violated Section 8(a)(1) and (2) of the Act by soliciting its employees to sign authorization cards for Independent Union of Building Service Employees, Local 1.

By letter dated August 16, 1991, counsel for Respondent moved the Board to remand the case to me on the ground that the decision indicates that I did not consider his brief. He attached a receipt for said brief stating that it was received at the Board's Office of Judges in New York on the morning that briefs were due to be received. However, it never reached me and, for that reason, was not considered. In an Order dated August 22, 1991, the Board remanded this proceeding to me to consider Respondent's brief and to issue a supplemental decision and order.

In the initial part of the decision, after crediting the testimony of General Counsel's witnesses and finding the testimony of Martin Meyer, an owner of Respondent, and David Green, business agent and organizer for Local 670, ''as being beyond belief,'' I found that by recognizing and executing collective-bargaining agreements with Local 670, Respondent violated Section 8(a)(1), (2), and (3) of the Act. The bases for this finding were numerous. For one thing, I did not believe that Local 670 represented an uncoerced, unassisted majority of the employees in the unit at the time of recognition. Meyer had met on two occasions in June 1989 with Domenic Paciello, secretary-treasurer of Local 32E, but they were unable to reach agreement on a contract. On July 17, 18, and 19, 1989, five Respondents executed collective-bargaining agreements (containing union-security agreements) with Local 670. The basis of the recognition and these agree-

ments is five Local 670 authorization cards signed by the employees involved herein; only two of these cards are dated. The Local 670 representative responsible for initiating this campaign among Respondents' employees did not testify. Green, who allegedly did the organizing for Local 670, testified on five occasions that he met with the employees and obtained the cards in August or September 1989. It was not until he was shown the dated cards for the second time that he changed his testimony to July 1989. I also found incredible that Respondent was able to check the authenticity of the signatures on the five cards, negotiate five agreements with Local 670, and have the three different managing agents sign the agreements, all within the same day that the cards were signed to 48 hours later. I found this speed and ease of negotiating somewhat unusual since Meyer had met with Paciello on two occasions in June without being able to reach any agreement.

*Bruckner Nursing Home*, 262 NLRB 955 (1982), was the other basis for my finding that the execution of these agreements was unlawful. I agreed with General Counsel's argument that by executing the agreements a few days before Local 32E refiled its petition, Respondents violated ''the spirit and rationale'' and ''the clear intention, if not the letter'' of *Bruckner*. In *Bruckner*, the Board made the filing of a petition with the Board the determinative factor in whether an employer may lawfully recognize one of a number of unions organizing its employees. I found that the Respondents violated the proscription of *Bruckner* because a petition had been filed (although subsequently withdrawn) and because it was withdrawn with the understanding that if Local 32E and Respondent could not reach agreement on a contract it would be refiled. For all these reasons, I found that by recognizing Local 670 and executing collective-bargaining agreements with it on about July 17 through 19, 1989, Respondent violated Section 8(a)(1), (2), and (3) of the Act.

Respondent's brief first addresses the dual card theory; my decision neither discussed nor relied on this theory in finding a violation, so it will not be discussed herein. The brief then states that: ''The burden of proof of lack of majority rests squarely with the General Counsel. . . . No witnesses rebutted the implication of a willful designation of Local 670.'' That is true. In the decision it states: ''Therefore, although the testimony of Meyer and Green regarding Local 670's card solicitation and the contract execution was, basically, uncontradicted, I discredit it as being beyond belief.'' As the Board stated in *Plasterers Local 394*, 207 NLRB 14 (1973):

> A trier of fact need not accept uncontradicted testimony as true if it contains improbabilities or if there are reasonable grounds for concluding that it is false. It is well settled that a witnesses' testimony may be contradicted by circumstances as well as by statements and that demeanor may be considered in such circumstances.

In *Shore Point Associates*, 280 NLRB 1206, 1210 (1986), the administrative law judge stated: ''Self serving statements of an employer or of an employee are not to be accepted merely because they are uncontradicted, when the record as a whole casts doubt on those statements.'' As was stated in the decision, the testimony of Meyer and Green was so improbable and doubtful that I would have to close my eyes to reality to believe it. Even though it was uncontradicted by other testimony, I therefore discredited it.

Counsel for Respondent next argues the *Bruckner* issue. He quotes the Board language in that case that says: ''We believe the proper balance will be struck by prohibiting an employer from recognizing any of the competing unions for the limited period during which a representation petition is in process.'' Although this language is certainly relevant to this determination, the fact that on five occasions in the *Bruckner* decision the Board referred to the filing of the petition convinced (and convinces) me that in the circumstances herein (with the agreement to refill the petition if the parties could not agree on a contract) Respondent's recognition of Local 670, and the execution of the agreements, violates the Act. Counsel for Respondent also cites *Film Consortium*, 268 NLRB 436 (1983), decided after *Bruckner*. However, that case is not helpful in the instant matter, because the charging party union never filed a petition in that matter.

Finally, counsel for Respondent argues that the 8(a)(1) allegations should be dismissed, as well. He states that as Cruz was not an employee, ''statements to her even if made, do not violate the Act.'' That is not so. *Albertson Mfg. Co*., 236 NLRB 663 (1978); *Nebraska Bulk Transport*, 240 NLRB 135 (1979). In addition, there were other reasons for finding that the statements made to Cruz, whom I found to be an articulate and credible witness, violate the Act. As stated in my original decision:

> Although she was not an employee of Respondents, that is not a valid defense herein. Because of her command of the English language, Respondents (and Local 32E) used her as a conduit in communicating with the supers, including Cruz. In addition, she was more than a disinterested observer in these goings on. Supers are given an apartment along with the job; when the job goes, so does the apartment. Ms. Cruz shares the apartment with her husband and must have been well aware of the consequences of crossing Meyer and Marks.

After reading the brief of counsel for Respondent, I find no reason for changing the decision issued in this matter on August 7, 1991.

[Recommended Order omitted from publication.]